STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES O'NEAL,

Defendant-Appellant.

UNPUBLISHED
January 25, 2000

No. 207776
Oakland Circuit Court
LC No. 97-151588 FH

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to 3½to 20 years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion for a directed verdict because the evidence was insufficient to establish his identity as the perpetrator of the crime. We disagree. In reviewing a trial court's ruling on a directed verdict, we must view the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements were proven beyond a reasonable doubt. *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998).

"The elements of the offense of breaking and entering with intent to commit larceny are: (1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein." *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *Crawford*, *supra* at 616.

In this case, testimony established that the perpetrator took numerous cartons of cigarettes from a party store after gaining access through a small opening in the wet and dirty roof. About an hour and a half later, defendant appeared at a gas station about one mile from the party store with a garbage bag full of cartons of cigarettes, which he attempted to sell to the attendant at fifty percent of their value. The cartons closely matched the quantity and brands that had been reported stolen. According to

police officers who arrived at the gas station, defendant's shirt was torn, his clothes were wet and dirty, and he had scrapes and bruises on his neck, back, arm and midsection. One officer testified that defendant gave her a false name, that his description of the route he took to the station conflicted with the surveillance tape, and that he was unable to provide the address or telephone number of the person who he claimed gave him the cigarettes. Further, a plastic-wrapped compact disc matching the "new" compact discs defendant attempted to sell about an hour before the breaking and entering, was found about ten feet from the party store's back door. We find that this circumstantial evidence was sufficient to support a rational juror's conclusion that defendant committed the breaking and entering. See *People v Bottany*, 43 Mich App 375, 377-378; 204 NW2d 230 (1972) (the defendant's identity as the perpetrator of the crime may be established beyond a reasonable doubt by segments of circumstantial proof in combination even if each segment of proof standing alone is not sufficient). Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant also argues that the trial court erred in denying his motion to suppress statements he made to the police inside the gas station. Defendant maintains that he was entitled to *Miranda*[1] warnings because he was in custody during the interview. Again, we disagree. On appeal, the issue whether a person is in custody for purposes of *Miranda* is a mixed question of law and fact that must be answered independently after review de novo of the record. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). This Court defers to the trial court's findings of fact unless clearly erroneous. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997)

Miranda warnings need only be given in situations involving a custodial interrogation. *Zahn*, *supra* at 449. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.*, quoting *People v Hill*, 429 Mich 382, 387; 415 NW2d 193 (1987). Whether an accused was in custody at the time of the interrogation depends on the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he was not free to leave. *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998). The determination depends on the objective circumstances rather than the subjective views harbored by either the interrogating officers or the person being questioned. *Zahn*, *supra* at 449.

Here, the police officers testified that they arrived at the gas station to investigate a call from the attendant, whereupon they questioned defendant briefly regarding the prior breaking and entering. According to the officers, defendant was not under arrest, had not been handcuffed, and did not ask to leave until they were through questioning him. Under these circumstances, we are not persuaded that defendant could have reasonably believed that he was not free to leave. *Marsack*, *supra* at 374. To the extent defendant's testimony conflicted with the officers' testimony, the trial court found the officers' version of events more credible, and we defer to that judgment absent any indication that it was clearly erroneous. MCR 2.613(C). We therefore agree with the trial court that defendant was not in custody when questioned and that the circumstances amounted to nothing more than general on-the-scene questioning as to facts surrounding a crime for which *Miranda* warnings are not required. *Hill*, *supra* at 398; *Miranda v Arizona*, 384 US 436, 477-478; 86 S Ct 1602; 16 L Ed 2d 694 (1966). Consequently, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Michael J. Talbot

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 694 (1966).